



STATE OF INDIANA

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November 26, 2012

Rocky M. Shroyer
DOC 956193
5501 South 1100 West
Westville, Indiana 46391

Re: Formal Complaint 12-FC-337; Alleged Violation of the Access to Public Records Act by the Madison County Sheriff's Department

Dear Mr. Shroyer:

This advisory opinion is in response to your formal complaint alleging the Madison County Sheriff's Department ("Department") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Andrew Williams, Jail Commander, responded on behalf of the Department. His response is enclosed for your reference.

BACKGROUND

In your formal complaint, you allege that on October 9, 2012, you submitted a written request for records to the Department for certain arrest records and booking photo for Melissa D. Pfleeger. On October 18, 2012, Mr. Williams responded in writing to your request and advised that your request was denied pursuant to I.C. § 5-14-3-4(b)(23). Mr. Williams further advised that the denial was requested by the Indiana Department of Corrections ("DOC"), citing the potential on your part to attempt to cultivate a trafficking partner in light of Ms. Pfleeger's past employment with the DOC and her recent arrest. You challenge the Department's ability to cite to I.C. § 5-14-3-4(b)(23) to deny your request and that the DOC has no authority to interfere with your request made under the APRA.

In response to your formal complaint, Mr. Williams advised that after conferring with the DOC, the Department does not have a vested interest in denying your request. Although the Department does still believe that the disclosure of said records could affect or concern the security of a jail or correctional facility, the Department will release the records to you. Mr. Williams further advised that it will be up to the DOC to determine whether to provide the records to you once received by the agency.

ANALYSIS

The public policy of the APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *See* I.C. § 5-14-3-1. The Department is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Department’s public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within twenty-four hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). Under the APRA a public agency denying access in response to a written public records request must put the denial in writing and include the following information: (a) a statement of the specific exemption or exemptions authorizing the withholding of all or part of the public record; and (b) the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). Counselor O’Connor provided the following analysis regarding section 9:

Under the APRA, the burden of proof beyond the written response anticipated under Indiana Code section 5-14-3-9(c) is outlined for any *court action* taken against the public agency for denial under Indiana Code sections 5-14-3-9(e) or (f). If the public agency claimed one of the exemptions from disclosure outlined at Indiana Code section 5-14-3-4(a), then the agency would then have to either “establish the content of the record with adequate specificity and not by relying on a conclusory statement or affidavit” *to the court*. Similarly, if the public agency claims an exemption under Indiana Code section 5-14-3-4(b), then the agency must prove to the court that the record falls within any one of the exemptions listed in that provision and establish the content of the record with adequate specificity. There is no authority under the APRA that required the IDEM to provide you with a more detailed explanation of the denials other than a statement of the exemption authorizing nondisclosure, but such an explanation would be required if this matter was ever reviewed by a trial court. *Opinion of the Public Access Counselor 01-FC-47*.

Here, the Department denied your written request for records in writing pursuant to I.C. § 5-14-3-4(b)(23). There is no dispute that you are currently confined in a penal institution. As such, you are an “offender” for the purposes of the APRA. *See* I.C. § 5-

14-3-2(i). The APRA contains an exception to disclosure to an “offender” for a record that contains information that would concern or affect the security of a jail or correctional facility:

Records requested by an offender that:

(A) contain personal information relating to:

(i) a correctional officer (as defined in IC 5-10-10-1.5);

(ii) a law enforcement officer (as defined in IC 35-31.5-2-185).

(iii) a judge (as defined in IC 33-38-12-3);

(iv) the victim of a crime; or

(iii) a family member of a correctional officer, law enforcement officer, judge, or the victim of a crime;
or

(B) concern or could affect the security of a jail or correctional facility. I.C. § 5-14-3-4(b)(23).

The Department provided in its denial that the DOC had requested that the Department deny your request, citing the potential on your part to attempt to cultivate a trafficking partner in light of Ms. Pfleeger’s past employment with the DOC and her recent arrest. As such, it is my opinion that the Department issued a proper denial of your request pursuant to section 9(c) of the APRA. Regardless, the Department has now submitted to the penal institution where you are housed all records responsive to your request. As noted, the determination by the DOC to provide you with such records is an issue outside the purview of the APRA, as the requested materials have now been forwarded. To the extent you challenge the DOC’s authority to deny you access to records provided by the Department, your proper avenue for redress would be with the DOC and not the Public Access Counselor’s Office.

CONCLUSION

For the foregoing reasons, it is my opinion that the Department has not violated the APRA in response to your request.

Best regards,



Joseph B. Hoage
Public Access Counselor

cc: Andrew Williams